IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.586 OF 2005
IN
SECOND APPEAL NO.351 OF 2005

Sau Shalini Shridhar Mhatre ..Applicant
Versus
Subhash Narhari Padate and Ors. ..Respondents

Mr.S.V.Palsule i/b Smita Mhatre for applicant
Ms Gauri Godse for respondents

CORAM : P.V.KAKADE, J.

DATE : 16TH SEPTEMBER, 2005

P.C.:

1. Heard the learned counsel for both sides.

2. This is an application to stay the judgment and order passed by the lower appellate court in Civil Appeal No.228 of 1996. Both the courts below have recorded concurrent findings that the present appellant-defendant was not entitled to declaration and injunction in respect of the suit property which was said to be ancestral property of them along with plaintiffs.

. I have perused the entire record. the learned counsel for the applicant submitted that he would be happy if he get the order of injunction or direction to the effect that no third party interest should be grantee on the suit property pending the appeal. However, the record shows that father of the plaintiff Pandharinath had two other brothers viz. Dattatraya and Narhari. Both the courts below have held that partitions were effected amongst said Dattatraya and Narhari 5.8.1982 by registered partition deed and by virtue of the said document the suit property have fallen to the share of the present respondents. The case sought to be made out by the present appellant was to the effect that their father was not in proper mental condition in the month of April 1982 and therefore the registered partition deed executed by him is not binding upon and them and the property is still ancestral property. This contention is rejected by both the courts below holding that the suit property belongs to the present respondents and appellant has no concerned with the said property.

3. In view of this factual matrix it would not be just and proper to issue either Stay order or Order of

injunction restraining the respondents from disposing or creating third party interest over the suit property. It was submitted on behalf of the applicant that he would suffer irreparable loss if the property is disposed of by the respondents pending the appeal. However, in case the appellant ultimately succeed, he would have remedy of getting proper possession or damages in terms of money regarding the property if at all or part thereof is found to be owned by the applicant. Under these circumstances there is no merit in the said application, the application is dismissed without any order of the costs.